

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DALE WILLS, No. C 07-03354 CW (PR)
Petitioner, ORDER ADDRESSING PENDING MOTION
v. (Docket no. 3)
JAMES TILTON, Warden,
Respondent.

On February 21, 2007, Petitioner signed his petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, and it was filed stamped in this Court on June 26, 2007. Also on June 26, 2007, Petitioner filed a document entitled "Petitioner's Notice of Motion and Motion for Order Directing Clerk to Endorse File Papers Retroactively" (docket no. 3). Petitioner states, "under the 'prison mailbox rule' he is entitled to have his petition and memorandum of points and authorities endorsed [sic] filed retroactively to the date of February 21, 2007, the date the papers were first given to prison officials for delivery to the Court." (Mot. for Order at 2.)

Under the "mailbox rule," a pro se federal habeas petition is deemed filed on the date it is delivered to prison authorities for mailing. See Saffold v. Newland, 250 F.3d 1262, 1268 (9th Cir. 2001), vacated and remanded on other grounds, Carey v. Saffold, 536

1 U.S. 214 (2002) (holding that a federal or state habeas petition is
2 deemed filed on the date the prisoner submits it to prison
3 authorities for mailing, rather than the date it is received by the
4 courts).

5 On September 6, 2007, the Court issued an Order to Show Cause.
6 On October 16, 2007, Respondent filed motion to dismiss the
7 petition as untimely (docket no. 8). Petitioner opposes the motion
8 to dismiss and raises the same argument that his federal petition
9 should be deemed filed on February 21, 2007. (Opp'n at 11.) The
10 Court will consider Petitioner's "prison mailbox rule" argument
11 when it rules on Respondent's motion to dismiss. Therefore, the
12 Court construes "Petitioner's Notice of Motion and Motion for Order
13 Directing Clerk to Endorse File Papers Retroactively" as a
14 supplement to his opposition to Respondent's motion to dismiss.

15 IT IS HEREBY ORDERED that "Petitioner's Notice of Motion and
16 Motion for Order Directing Clerk to Endorse File Papers
17 Retroactively" (docket no. 3) is ADMINISTRATIVELY TERMINATED as
18 unnecessary. The Clerk of the Court shall docket the
19 aforementioned motion as a "Supplement to Petitioner's Opposition
20 to Respondent's Motion to Dismiss."

21 This Order terminates Docket no. 3.

22 IT IS SO ORDERED.

23 Dated: 3/24/08



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

DALE WILLS,

Plaintiff,

v.

JAMES TILTON et al,

Defendant.

Case Number: CV07-03354 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on March 24, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

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Dale G. Wills J-16405
Corcoran State Prison
P.O. Box 5246
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Dated: March 24, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk

United States District Court
For the Northern District of California